

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NINA A. WESTERHOFF,

Plaintiff,

v.

CAROLYN COLVIN, Acting
Commissioner of the Social Security
Administration,

Defendant.

CASE NO. C13-5269 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 24), and Plaintiff Nina Westerhoff’s (“Westerhoff”) objections to the R&R (Dkt. 25).

On March 24, 2014, Judge Creatura issued the R&R recommending that the Court affirm the decision of the Administrative Law Judge (“ALJ”) that Westerhoff was not disabled. Dkt. 24. On May 8, 2014, Westerhoff filed objections. Dkt. 25.

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

1 In this case, the Court has reviewed the record and the relevant pleadings and
2 agrees with Judge Creatura on all issues. The one issue that concerned the Court was
3 Westerhoff's argument that the ALJ failed to take into account all of Westerhoff's
4 limitations. Dkt. 25 at 10–11. Dr. Terilee Wingate assessed Westerhoff with a moderate
5 functional limitation in situations with public contact. TR 393. Westerhoff argues that
6 the ALJ's failure to acknowledge this limitation is harmful error because "it would
7 prevent Westerhoff from performing the past relevant work that the ALJ concluded she
8 could perform." Dkt. 25 at 3. The Court disagrees. Even if the ALJ committed error, it
9 was not harmful. Both of the jobs that the ALJ found Westerhoff was able to perform
10 require little, if any, public contact. TR 25 (jobs DOT #166.267-034 and DOT #169.167-
11 064). Therefore, the error, if any, was harmless.

12 The Court having considered the R&R, Westerhoff's objections, and the
13 remaining record, does hereby find and order as follows:

- 14 (1) The R&R is **ADOPTED**;
- 15 (2) The decision of the ALJ is **AFFIRMED**; and
- 16 (3) This action is **DISMISSED**.

17 Dated this 31st day of July, 2014.

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19 BENJAMIN H. SETTLE
20 United States District Judge
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